Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1303

DONALD HAYWARD,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioner, Donald Hayward, respectfully requests that a writ of certiorari issue to review the judgment and order of the United States Court of Appeals, Second Circuit, entered on or about February 24, 1977, affirming the judgment of the United States District Court, for the Eastern District of New York (Thomas C. Platt, Jr., Judge), entered October 22, 1976 convicting the said petitioner for the crimes of conspiracy under the first count of the indictment, former Sections 173 and 174 of 21 U.S.C. and the succeeding Sections 812, 841(a)(1) and 841(b)(1)(A), the receiving, concealing and facilitating the transportation and concealment of heroin, under the 10th count of the indictment, Sections 173 and 174 of 21 U.S.C. as aforesaid, and under the 14th count of the indictment, the illegal possession with intent to distribute narcotics under 21 U.S.C. 841(a)(1) and 841(b)(1)(A). As a con-

sequence, the petitioner was sentenced to a seven (7) year jail term under the first count of the indictment, pursuant to 18 U.S.C. 4205(b)(2) and two separate seven (7) year jail terms under counts 10 and 14 of the indictment, both terms to run concurrently with the term imposed under count 1 thereof, to be followed by a special parole term of five (5) years.

JURISDICTION

The order of affirmance of the United States Court of Appeals, Second Circuit, was rendered from the bench on February 24, 1977 and a copy of said order is reprinted herein as Appendix A, infra, there being no opinion of the said Circuit Court of Appeals, for the Second Circuit.

The jurisdiction of this Court is invoked, made and conferred under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Was the petitioner deprived of due process of law under the 5th Amendment to the Federal Constitution where the Court refused to charge the jury that a reasonable doubt to guilt can arise from a lack of evidence?

2. Was the Court correct in refusing to charge the jury specifically that the theory of the defense, namely the cross examination of the government's witnesses and the answers produced from the questioning on cross examination, showed that the witnesses were not truthful?

THE PRINCIPAL CONSTITUTIONAL PROVISIONS, STATUTES AND FEDERAL RULES OF CRIMINAL PROCEDURE RELIEF UPON:

AMENDMENT V: (In part)

". . . No person . . . be deprived of life, liberty or property, without due process of law; . . . "

AMENDMENT VI: (In part)

"In all criminal prosecutions . . . ; to be confronted with the witnesses against him . . . ;"

RULE 30 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE:

"Rule 30. Instructions

"At the close of the evidence or at such earlier time during trial as the Court reasonable directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon request prior to their argument to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury and, on the request of any party, out of the presence of the jury."

RULE 52 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE:

"(b) Plain Error. Plain errors or defects affecting

substantial rights may be noticed, although they were not brought to the attention of the Court."

STATEMENT OF THE CASE

The government called its first witness named Curtis Newell (A17).* Newell's penal biography ran from maintaining an illegal policy enterprise to narcotic trafficking (A17-A20, A29, A30). After being apprehended, Newell agreed to cooperate so he could serve a life probation in place of life imprisonment for violation of narcotic laws of the State of New York (A20, A22). He testified however that in making arrangements with the government, he would be liable for perjury.

Newell and the petitioner lived in the same area when they were very young and attended school. In his youth he visited the petitioner's home and went out with the petitioner's sister. For a period of years he didn't see the petitioner.

In his mature life he bought a grocery store which he quickly converted in an illegal policy outlet. He operated the lottery with one Solomon Glubber.

While operating the grocery store by chance he met the petitioner. He knew the petitioner was a police officer. The petitioner played numbers at the store.

In 1965 Newell went into narcotic trafficking. This brought him to one John Boland. Boland offered to supply narcotics but wanted to be paid. In order to do this the witness participated in a robbery and used the proceeds to pay Boland for narcotics.

He also cultivated the cocaine usage.

Boland was not the only source of narcotics according to Newell (A37, A38).

In 1967 he closed the grocery store.

* ( ) This refers to the pagination of the appendix furnished by the appellant.

He then operated in various bars trafficking in narcotics (A39, A40).

He also snorted cocaine with the petitioner.

He specifically met the petitioner in 1967 or 1968 at a bar called "Marguerite's". There he discussed narcotics with the petitioner, the drug being heroin.

According to Newell the petitioner told him that he had a friend who needed heroin.

Newell then changed his location and continued operating as a narcotics business at a bar called "Page 5" in Queens (A43). There he met a Danny Vanieri who introduced him to a new supplier. This was a combine designated "Pappa". This source lasted for 18 months (A55).

Again he moved to another bar called "Villa Rodell" (A45). The petitioner also went there (A45, A46).

The petitioner, needing a Buick, purchased one through this witness (A46-A48).

Newell also sold cocaine to a friend of the petitioner's but was dissatisfied because the payment was late (A47).

In the summer of 1968 Newell, the petitioner, Glubber, Boland and one "Nancy" with some women, took a boat ride. They all used cocaine (A50).

When Newell was getting his supply from the "Pappa" organization, he made $300,000 profit (A56, A57).

In 1970 Hayward asked this witness if he could supply him with narcotics (A58, A59).

Later the petitioner made a purchase for $12,500 (A60). In regard to this purchase, the witness and the petitioner allegedly arranged for a place of delivery (A61). The supply of this came from the "Pappa" organization (A62, A63, A67, A81).

According to the witness by the end of 1970 he made five or six transactions with the petitioner (A65).

In 1969 Newell borrowed $4,000 from the petitioner which he never repaid (A66, A67).

Meanwhile Newell was also selling to "Bowlin" (sic) and it is assumed that this was one John Boland who later testified.

In November 1970 Boland also was supplying Newell with narcotics (A68, A69).

In June 1971 Boland apparently displaced the "Pappa" organization as a source (A81, A82, A99, A100). However Newell indirectly also got supplies from the "Pappa" combine (A81, A82).

According to Newell he informed the petitioner of the new source of supply. He also gave the petitioner a sample of heroin for which he received $13,500 (A82, A83).

In regard to the transaction he testified that he and the petitioner drove to Boland's home in Port Washington, (A83). There, Boland suffered an asthma attack (A84, A85). Nevertheless Boland gave the witness a sample but not in the presence of the petitioner (A84, A85).

The next day the petitioner paid him (A87, A88).

As a result of this transaction, Newell called Boland the next day. Boland complained that the price was too small and the witness and Boland then diluted a delivery which was given to the petitioner at the witness' apartment (A89, A90).

In March 1971 Newell allegedly sold heroin to the petitioner and the source of this was the "Pappa" vendors (A90, A91).

Next was the testimony of Newell as to an incident at the "Starglow Bar". It will be recalled that Newell testified that he operated at various bars. This particular incident oc-

curred when Glubber, a person by the name of McMillan (who later testified), and Vanieri were there, as well as a bartender named "Alibi Evangelista" (A91, A92). Newell told "Alibi" to fetch a package from the witness' car and put it in a "Riviera" (A92). The petitioner was told this had been done and he finished his drink and left (A92).

Next Newell related that the "Pappa" organization discontinued dealings with him because they heard he was dealing with a "cop" (A93).

Newell recounted that he made deliveries to the petitioner at the petitioner's apartment and that he also visited him socially there (A94).

This witness, when he was arrested, was searched and a certain book having telephone numbers and identities was seized from him in 1973. Among the names was the name "Jim Green" followed by a telephone number. However the series of numbers as to this designation was partly reversed so as to prevent the disclosure of the true telephone number (A98). As to be expected, the name Jim Green was ascribed to the petitioner and the telephone number was in the petitioner's name which was unlisted (A97, A105, A109, Government's Exhibit 1).

Total contact with the "Pappa" organization ceased and Newell was voted out (A99).

In August 1971, therefore, he transacted with the petitioner, Boland being the source (A100, A101, A105, A106).

Finally Newell related a transaction in his apartment where Boland and the petitioner were present. He recalled the day as being extremely hot (A107). When this witness passed the narcotics to the petitioner at the apartment, they were alone.

Newell also related to the jury a conversation he had with Glubber in the fall of 1972. Glubber told him that the

petitioner was buying large quantities of narcotics (A117-A114).

In the late summer of 1973 the petitioner allegedly called Newell and arranged an appointment. The petitioner asked Newell for a half a kilo of heroin (A113). This time the source was attributed to one George Tertunian (A113, A114). However a meeting was arranged, Tertunian was present, but was suspicious of the petitioner and this transaction never was consummated (A118, A119).

On cross examination Newell admitted that he was arrested in February 1975 for narcotics (A121). When he was interviewed in 1975 by the authorities he never mentioned the petitioner (A121, A122). Later the United States Marshall encouraged him to do so (A122, A123). As Newell stated the Marshall told him "Curtis, we have to have this guy" (A123). This of course referred to the petitioner (A123).

While Newell readily admitted that he had other dealings (ilicit) with members of the New York City Police force but the petitioner was the only police officer he transacted narcotics with (A126, A127).

In regard to the telephone listings, he stated that the names of the persons contained therein were true, it was only the petitioner's name that was disguised and only the petitioner's telephone number that was changed (A127).

In regard to the transaction of March 1971, Newell admitted that only the petitioner and he were alone and that Boland, while in the house, was never present at the transaction (A128).

He also admitted he was reluctant to inform as to the petitioner because the petitioner was his friend (A129).

The next witness was John McMillan (A149). His penal record was disclosed to the jury on direct examination by the government (A149, A150).

According to McMillan in March 1971 he went to the Starglow Bar. He possessed cocaine at that time (A152, A153). While there he was suspicious of one of the bystanders whom he thought was a police officer. He was told this was a friend of Newell, the previous witness (A153, A154).

McMillan was unable to identify the petitioner in the court-room.

At the time in question he told the bartender who left to run an errand that he thought it was foolish to deal with a "cop" (A155, A156).

On cross examination the witness admitted that it was only two days before the immediate trial that he realized that the aforementioned incident occurred March 1971 (A157, A158).

John Boland next testified (A161). His questionable background was disclosed on direct examination (A162, A163). He had a record of narcotic trafficking (A163).

After March 18, 1971 he saw the petitioner in Newell's apartment twice (A164-A165).

In regard to the incident of August 9, 1971, he did not think of this date spontaneously. He admitted that it was suggested to him by the authorities. The only thing he could remember about the crucial date was it was hot (A165). Further, that Newell told him that the petitioner was there to get the "package" (A166).

Furthermore, according to Boland the petitioner stated that on the day in question he had to be at Riker's Island (A167). Boland stated he might have seen the petitioner after August 1971 (A168).

Later he told the petitioner that he was the supplier of the heroin that the petitioner was allegedly getting. The petitioner avoided all discussion with him (A169).

On cross examination Boland admitted that he was at the New York State Special Prosecutor's Office. One of the authorities there suggested the date as to the transaction as being August 9, 1971. But Boland admitted that any date that was suggested to him he would have adopted (A170).

Furthermore, he initially told the authorities of the petitioner in April 1975 (A185), although Boland did refer to the petitioner in 1972 when he was interviewed by the Special Prosecutor of New York State (A191).

Boland next admitted that he never saw the petitioner receive narcotics; never saw the petitioner give any money to Newell (A195). Except for what Newell told him, he knew only that the petitioner and Newell were friends (A196, A197).

The next witness called by the government was a member of the New York City Police Department. His name was Bowe (A208). He testified that the petitioner was trained by the Police Department in regard to narcotics investigations. That part of the instructions were to the effect that heroin was imported (A208).

THE DEFENSE

The defense consisted of the testimony of three (3) witnesses as to the good reputation that was enjoyed by the petitioner (A227, A230, A241, A243, A249, A255).

However over objection, the government was allowed to cross examine them as to a certain disciplinary action the petitioner was subject to when he was a member of the New York City Police Department (A224).

Thus one of the witnesses named Saley, also a former member of the New York City Police Department who apparently was retired at the time of trial, was questioned on cross examination as to whether he and the petitioner when they were police officers in 1965 ever stopped a

person by the name of Thompson on the street. It appeared that Thompson was a narcotic trafficker (A234). Further that Thompson gave either the witness or the appellant a package. Meanwhile, federal agents were in the area and observed this. The agents stopped the petitioner and the witness (A234). The witness and the petitioner told the agents that they were police officers (A235).

The witness further questioned, stated he didn't know whether the petitioner made a report of this incident to the Police Department (A234). He was then asked whether he knew the petitioner was suspended from the Police Department because in a disciplinary action the petitioner was found guilty of failure to take proper police action (A236).

He was then asked if this arose because the petitioner and another police officer requested $500.00 from two suspects who illegally possessed a revolver (A236, A237). The witness replied that he heard the petitioner was demoted (A237).

There were similar questions asked of another witness called by the petitioner named Terrelonge (A244). On cross examination he was also asked whether he knew that the petitioner was suspended from the police department in 1973 (A244). Initially this would appear to be because of the then indictment and its relevancy is doubted (A244).

He was then asked about the other incident that gave rise to the disciplinary action (A246).

REASONS FOR GRANTING THE WRIT

POINT I

IT WAS ERROR TO REFUSE TO CHARGE THE TRIAL JURY THAT REASONABLE DOUBT OF GUILT CAN ARISE FROM A LACK OF EVIDENCE AND THE REFUSAL TO CHARGE THIS CONSTITUTED A VIOLATION OF DUE PROCESS OF LAW UNDER THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The portion of the Court's charge to the jury as to reasonable doubt is found on pages A261 to A262 of the Appendix furnished to the Court below. At the end of the charge, counsel duly excepted to the charge stating that:

> "Mr. Segal: I would ask Your Honor as to a definition as to reasonable doubt. Your Honor said common sense and reason. I would ask Your Honor to charge the lack of evidence or the type of evidence presented to you can raise a reasonable doubt.
>
> "The Court: I am not going to amplify on my charge." (A299)

While the jury was deliberating, the jury sent a note to the trial judge requesting in part that:

> ". . . Please furnish us with the testimony of McMillan relating to the Bohack deal. The testimony relating only to the amount of Boland and Newell conversed with each other relating to the preparation for trial. The grand jury appearances . . . " (A311)

Then another note was sent to the judge by the jury which was characterized by the trial court as follows:

> "The Court: I have a note from two of you jurors. I will re-read the portion of my charge that I gave you with respect to reasonable doubt." (A322).

The Court then re-read its original charge as to reasonable doubt (A322-A324).

It is respectfully submitted that the concept of "reasonable doubt" is the whole essence of a criminal trial. Aside from motions to suppress evidence, evidence which is highly probative in most cases, the issue of "reasonable doubt" relates to guilt or innocence, the substantial purpose of a criminal trial and the fact finding process. In other words "reasonable doubt" is not a technical nicety, it is rooted in due process of law under the 5th Amendment to the Federal Constitution.

See *In Re Winship*, 397 U.S. 358 (1970) at page 362 it was stated in part that:

> "Expressions in many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required . . . "

It was stated in part at page 363 that:

> "The reasonable doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. . . . "

In *Johnson v. Louisiana*, 406 U.S. 356 (1972) at page 360 it was stated in part that:

> "Numerous cases have defined a reasonable doubt as one based on reason which arises from the evidence or lack of evidence . . . U.S. v. Johnson 343 F.2d 5, 6 n 1 (CA 2 1965) . . . " (Other citations and quotations omitted).

Furthermore, the request to charge as well as the exception to the charge relating to the meaning of

"reasonable doubt" as arising from a lack of evidence, is in conformity to the constitutional requirement that convictions based on no evidence violate due process of law. See *Harris v. U.S.*, 404 U.S. 1232, (1971) Mr. Justice Douglas in chambers, summarizing this at page 1233:

> "Applicant principally argues that there is no evidence in the record from which an inference is permissible that he knew that a truck guided by him and a co-defendant, . . . contained unlawfully imported narcotics. It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged would violate due process . . . "

See also *Douglas v. Buder*, 412 U.S. 430 (1973) at page 432 where it was stated that:

> ". . . Consequently, we conclude that the finding that petitioner had violated the conditions . . . was so totally devoid of evidentiary support as to be invalid under the Due Process Clause of the Fourteenth Amendment . . . "

In 23 A. Corpus Juris Secondum, Section 1283, at pages 679-680 it was stated in part that:

> "It is essential to an adequate instruction on the subject of reasonable doubt that the jury be advised as to the effect of the lack of evidence. Accordingly, it is proper to charge, and error to refuse to charge, that a reasonable doubt may arise either from the evidence or from a want of evidence, although there is also authority to the contrary, and in the absence of sufficient satisfying evidence may be a ground for a reasonable doubt of guilt . . . Instructions are not erroneous, however, merely for failure to state in terms that want of evidence may afford a basis for reasonable doubt where the instructions are held not expressly to

> exclude such basis or are held to include the same or a similar thought in other language. . . . "

In *U.S. v. Medlin*, 353 F. 2d 789 (Cir. 6th, 1965) at page 797 it was stated in part that:

> "The quoted instructions did not specifically tell the jury that a reasonable doubt could arise from the evidence. The Court did state however, that a fair doubt is one that is based upon reason and arising out of the state of evidence . . . They hold that if an instruction on a critical point such as reasonable doubt misstates the law, it may be prejudicial error even though a correct rule is announced elsewhere in the instructions. The accused supplemental charge on reasonable doubt did not misstate the law, although it did not contain an entire review of the subject. The District Judge had, . . . already given instructions on presumption of innocence, burden of proof and reasonable doubt and at one point therein it said that *reasonable doubt may arise not only from the evidence produced but from a lack of evidence* . . . " (Emphasis in part supplied, internal quotations and citations omitted).

POINT II

THE COURT SHOULD HAVE CHARGED THE JURY AS REQUESTED THAT THE EVIDENCE PRODUCED BY THE CROSS EXAMINATION OF THE GOVERNMENT'S WITNESSES WAS A DEFENSE OR PUT ANOTHER WAY, THAT THE IMPUNING OF THE CREDIBILITY OF THE GOVERNMENT'S WITNESSES COULD BE CONSIDERED AS A DEFENSE.

Recognizing that a defendant in a criminal case need not take the stand and testify in his own behalf, as he is privileged under the 5th Amendment to the Federal Constitution to remain silent, nevertheless the Court below in *U.S. v. Frank*, 494 F.2d 145 (Cir. 2d, 1974) cert. denied 419 U.S. 828 (1974) stated at page 153 that:

> "In passing upon the sufficiency of the evidence, the Court had only the prosecution's case, the defense having offered none . . . But the self-incrimination clause does not elevate a defendant's silence much less the failure to present any defense case, to the level of a convincing refutation. When a defendant has offered no case, it may be reasonable for the jury to draw inferences from the prosecution's evidence which would be impermissible if the defendant had supplied a credible, exculpatory version . . . "

Nevertheless, an alternative route to presenting a defense would be the cross examination of the Government's principal witnesses. The cross examination itself may be a "defense". This is one of the meanings, it is submitted, of the confrontation clause of the 6th Amendment to the Federal Constitution.

While the Court in charging the jury stated that: "evidence" is also the product of cross examination, and

that the discrepancy of a witness' testimony or conflict between the testimony of the respective witnesses "may or may not" stimulate the jury to discredit such testimony (A286), counsel specifically submitted to the Court a recent ruling of the Court below in *U.S. v. Alphonso-Perez*, 535 F. 2d 1362 (Cir. 2d, 1976). On page 1365 the Court below stated in part as follows:

> "We have held that a defendant is 'entitled' to have instructions presented relating to any theory of defense for which there is any foundation in the evidence, no matter how weak or incredible . . . This language is broad enough to include the theory that the Government's witnesses are lying."
>
> ". . . We only point out that there was a sufficient basis in the record to permit defendant to argue his theory to the jury—in fact, defendant was permitted to make such an argument without objection. Where this is so, there is no reasonable ground for a judge to refuse to charge the jury, without suggesting that he agrees with it, that this is defendant's theory of the case. This error, too, would be unlikely in itself to have prejudiced defendant, since the defense summation squarely propounded Alfonso's theory to the jury. But as appellant points out, it is of some value to a defendant to have the trial judge clearly indicate to the jury what his theory of the case is, and that that theory, if believed, justified acquittal. . . . "

In the interests of objectivity, petitioner cites or refers to the further instructions of the Court as to the role and the testimony of an accomplice. Thus the Court told the jury that it could credit the testimony as the jury may think the "testimony deserves" (A287). The jury was further told that the testimony of an accomplice alone, if believed, may be sufficient (A287, A288). The jury was also told that it

should accept the testimony of an accomplice with "great care"; that the uncorroborated testimony of an accomplice may be insufficient "unless it is believed beyond a reasonable doubt" (A288). Then the Court gave the usual instruction that the prosecution must use accomplices to testify because the prosecution may have no choice (A288).

In this type of narcotic case, there is usually a large amount of testimony from accomplices who testify to what the accused may have said and may have done. The narcotics in this case were never produced at trial. Actually the government's evidence was the testimony of accomplices and nothing else.

Consequently it should have been brought home to the jury that the cross examination of the witnesses against the petitioner should be scrutinized by the jury and can be considered as a defense.

The record will bear out that the petitioner's counsel furnished a recently decided case by the very Court below to the Court. While the Court did not have to give the requested instruction in the exact language of the case as petitioner's counsel may have desired, although the case did have a requested instruction by the defense involved in that holding, nevertheless as was stated in Federal Practice and Procedure, Wright, page 278 Section 482:

> "The Court is not required to give restricted instructions in the exact language requested, even if they correctly state the law. Indeed it is usually preferable for the Court to use its own language in framing instructions. It is enough that the charge adequately and correctly covers the substance of the requested instructions . . . A party is entitled to a specific instruction on his theory of the case if there is evidence to support it and a proper request for such instruction is made, but the Court is not required to outline all possible factual considerations that would fail to show defendant's connection with the crime, nor is it required to give an instruction emphasizing a certain phase of the evidence." (At pages 278-280).

In conformity with the technical niceties that may be argued by the respondent under Rule 30 of the Federal Rules of Criminal Procedure, we respectfully bring to the attention of the Court that the government on page 20 in the brief furnished to the Court below stated in part that:

> ". . . He then submitted a request to charge based on this case prior to summation (T. 651). While the record does not reflect the substance of the requested instruction, it was assumed that it dealt with the defense theory of the case. . . . "

Then, the government argued in the Court below that the trial judge "fully instructed" the jury on the defense theory of the case. It was further stated by the government that:

> ". . . When trial counsel asked for a further elaboration on the charge-in-chief to specifically conform to his summation argument that the accomplice witnesses substituted the defendant for someone else, the government objected and Judge Platt properly responded that he would stand on the instruction given as it had been requested by counsel." (Internal quotations omitted).

It is further submitted that in the event that counsel did not properly comply with Rule 30 as aforesaid, nevertheless the trial court's disregard of the request was "plain error" under Rule 52(b) of the Federal Rules of Criminal Procedure, especially in the light of the holding of *U.S. v. Frank, supra.* Standing between the indictment and the government's proof in this case was the competency of petitioner's counsel to effectively cross examine the government's witnesses. This was a defense and the Court should have framed the charge to the jury to bring this home to them clearly.

CONCLUSION

IT IS RESPECTFULLY SUBMITTED THAT A PETITION FOR A WRIT OF CERTIORARI BE GRANTED.

Respectfully submitted,

ARNOLD E. WALLACH
A Member of the Bar of the
United States Supreme Court

ORDER DATED FEBRUARY 24, 1977

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-fourth day of February, one thousand nine hundred and seventy-seven.

Present:
HON. WALTER R. MANSFIELD
HON. ELLSWORTH A. VAN GRAAFEILAND
Circuit Judges

HON. JACOB MISHLER
District Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

VIRGIL ALESSI, FRANK CAMMARANO, a/k/a FRANKIE APOLLO, FRANK D'AMATO, a/k/a FRANKIE, JOHN D'AMATO, ALBERT EVANGELISTA, a/k/a ALIBI, ROCCO EVANGELISTA, a/k/a ROCKY, SOLOMON GLOVER, DONALD HAYWARD, JOSEPH LA FAUCI, a/k/a JOEY, VINCENT PAPA, ANTHONY PASSERO, a/k/a TONY, DOMINICK

PIETRANICO, a/k/a PEPE, DANIEL RANIERI, a/k/a DANNY, ANA VILLANEUVA,

Defendants

FRANK CAMMARANO, a/k/a FRANKIE APOLLO, DONALD HAYWARD,

Defendants-Appellants.

Appeal from the United States District Court for the Eastern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgments of said District Court be and they hereby are affirmed.

A. DANIEL FUSARO
Clerk

By Vincent A. Cahn
Chief Deputy Clerk